

## AGENDA

### SPECIAL MEETING COMMITTEE ON LANDS AND BUILDINGS

February 6, 2007  
Aldermen Thibault,  
Smith, Forest, Roy, Long

4:30 PM  
Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)

1. Chairman Thibault calls the meeting to order.
2. The Clerk calls the roll.
3. Consideration of a request of Parks, Recreation and Cemetery Department that City-owned property be declared surplus and an easement be granted to the City by Tires, Inc. in conjunction with the Piscataquog Trailway across Main Street.

*Notes:*

*Board of Assessors: report to be submitted at meeting.*

*Planning: reporting to be submitted at meeting.*

*Tax Collector: no interest in disposition, not a tax-deeded parcel.*

**Gentlemen, what is your pleasure?**

4. Communication from Deputy City Solicitor Arnold regarding easements for parcels of land involved in the settlement of a class action suit.

**Gentlemen, what is your pleasure?**

5. If there is no further business, a motion is in order to adjourn.



**CITY OF MANCHESTER**  
**Parks, Recreation & Cemetery Department**

625 Mammoth Road  
Manchester, NH 03104-5491  
(603) 624-6565 Administrative Office  
(603) 624-6514 Cemetery Division  
(603) 624-6569 Fax

**COMMISSION**

Stephen Johnson, Chairman  
Sandra Lambert, Clerk  
George "Butch" Joseph  
Michael Worsley  
Dennis Smith  
Ronald Ludwig, Director

January 24, 2007

Committee on Lands & Buildings  
City Hall  
908 Elm Street  
Manchester, NH 03101

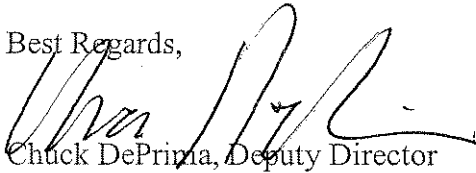
**Re: City Land Transferred to Tires Inc. and acceptance of Easement across lot 378-1**

Dear Members of the Committee:

As the Piscataquog Trailway proceeds from the original phase beginning at Turner Street and terminating at Main Street we have sought to continue in a westerly direction in the safest way possible. This preferred route will cross land currently owned by Tires Inc on lot 378-1 and an easement will need to be granted to the City by this land owner. In exchange for this easement, the City will grant land to the property owner (see attached plan). We respectfully request the city property be declared surplus and the easement be accepted subject to approval of the City Solicitor to draft and the Mayor to sign.

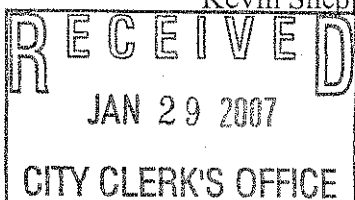
This transaction will benefit the City by providing a safe and continuous corridor for the Piscataquog Trailway across Main Street and allow us to continue with future phases of the Trailway. Since this trailway will soon cross to the east side of the Merrimack River we anticipate a significant amount of pedestrian traffic this safe connection is more critical than ever.

Best Regards,

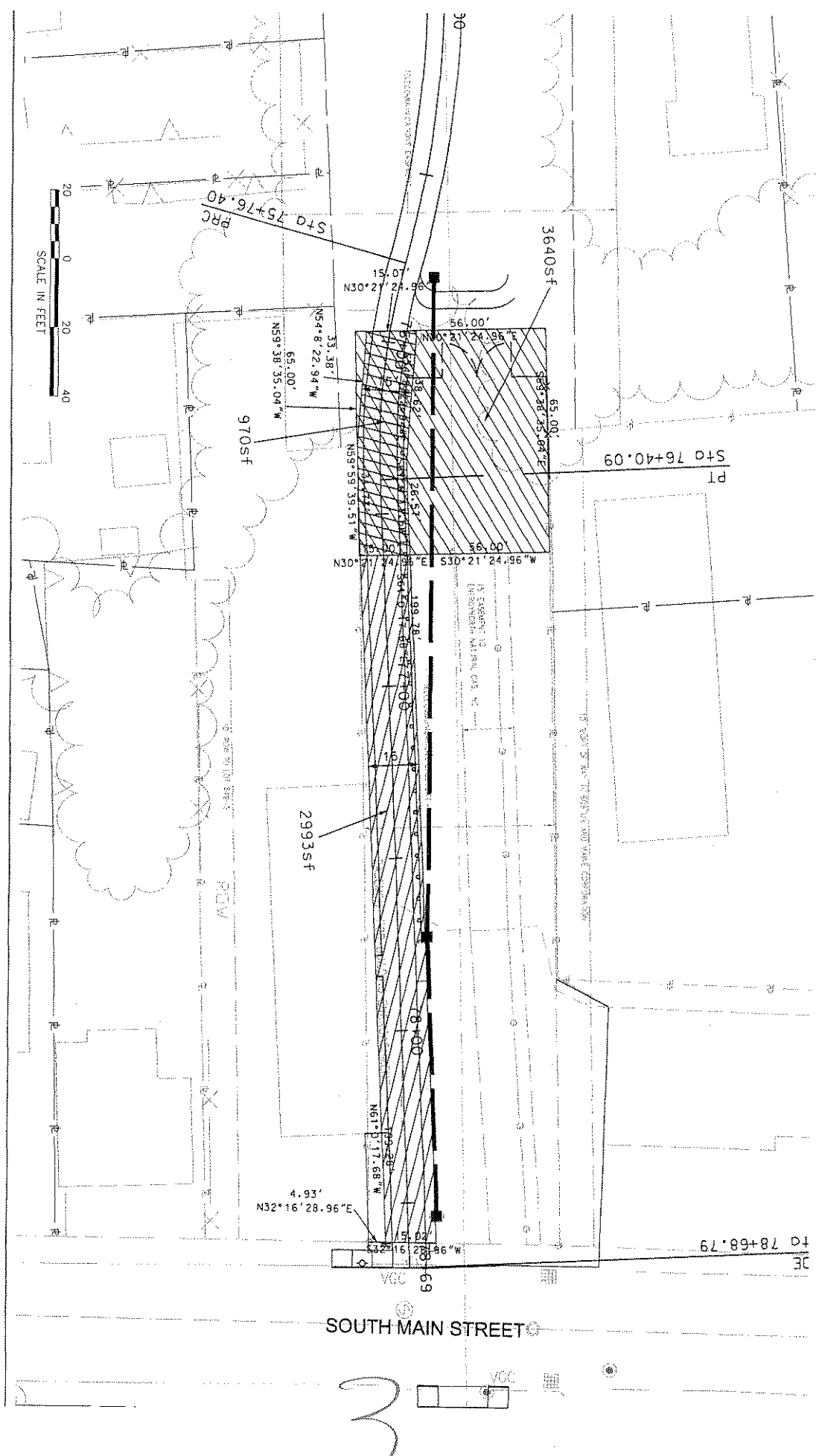


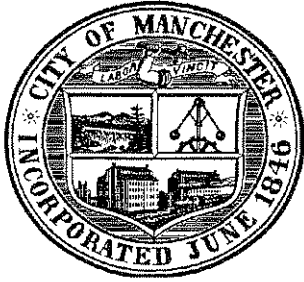
Chuck DePrima, Deputy Director

Cc: Ronald E. Ludwig, Director  
Thomas Arnold, Deputy City Solicitor  
Ram Maddali, Project Manager NHDOT Bureau of Municipal Highways  
Robert Mackenzie, Planning Director  
Kevin Sheppard, Deputy Director Public Works



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City of Manchester  
Office of the Tax Collector

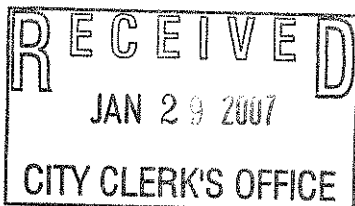
City Hall  
One City Hall Plaza - West  
Manchester, New Hampshire 03101  
(603) 624-6575 (Phone)  
(603) 628-6162 (Fax)

Joan A. Porter  
Tax Collector

## Memorandum

DATE: January 29, 2007  
TO: Land & Building Committee  
FROM: Joan A. Porter, Tax Collector  
RE: Tires Inc/ Easement/ Land Grant

The Tax Collector's Office has no interest in the disposition of this property as it is not a tax-deeded parcel.



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**City of Manchester  
Office of the City Solicitor**

One City Hall Plaza  
Manchester, New Hampshire 03101  
(603) 624-6523 Fax (603) 624-6528  
TTY: 1-800-735-2964  
Email: [solicitor@ManchesterNH.gov](mailto:solicitor@ManchesterNH.gov)

Thomas R. Clark  
City Solicitor

Thomas I. Arnold, III  
Deputy City Solicitor

Daniel D. Muller, Jr.  
Michele A. Battaglia  
Gregory T. Muller  
Michael A. Beausoleil

January 31, 2007

Committee on Lands and Buildings  
c/o Leo Bernier, Clerk  
One City Hall Plaza  
Manchester, New Hampshire 03101

**Re: AT & T Fiberoptic Cable Easements**

Gentlemen:

In August, 2005 various City departments were notified that the City was a member of class action litigation before the Federal District Court for the Southern District of Indiana.

The basis of the class action claims was that certain railroads, in the City's case the Boston and Maine Railroad, had granted an easement to AT & T for fiberoptic cable where in certain areas it did not have authority to do so as the railroad did not own the railroad bed in fee but rather only had an easement for railroad tracks and operations. AT & T installed fiberoptic cable in the railroad right of way pursuant to the easement granted by the railroad.

The City has recently been notified that it is eligible for compensation on two parcels of land as a result of the settlement of the class action.

One parcel is the waste water treatment plant site, Tax Map 651A, Lot 18, the compensation allowed is \$8374.80. The second parcel is vacant land just north of the Amoskeag Bridge between River Road and the railroad tracts, Tax Map 415, Lot 1, the compensation allowed is \$420.00.

In order to receive compensation the City must execute the attached easements for the AT & T fiberoptic cable which is already in place. Consequently, I would request that the granting of the attached easements be approved and that the Mayor be authorized to sign.

I will be in attendance at the next meeting of the committee should there be any question.

Very Truly Yours,

Thomas I. Arnold, III  
Deputy City Solicitor

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**NEW HAMPSHIRE  
"TELECOMMUNICATION CABLE"/  
RAILROAD CORRIDOR CLASS SETTLEMENT  
GRANT OF COMMUNICATIONS SYSTEM EASEMENT/RELEASE**

In consideration of the sum of \$10 (ten dollars) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, City of Manchester, a New Hampshire municipal corporation (hereinafter collectively with his/her/its successors-in-interest called "**Grantor**"), **hereby grants, conveys, and assigns** to AT&T Corp., a New York corporation, its predecessors, successors, and past and present subsidiaries, assigns, affiliates, officers, directors, agents, attorneys, insurers, and employees (hereinafter called "**Grantee**"), a permanent easement to operate, maintain, reconstruct, replace, and remove its present telecommunication cable system, which system includes without limitation underground and/or surface cables, conduits, wires, pipes, ducts, waveguides, surface testing terminals, manholes, markers, regeneration huts, and other appurtenances (hereinafter collectively called "**Telecommunication Cable System**"), *all where they are presently in place*, plus future additions, upgrades, or expansions to the Telecommunication Cable System, as well as to install new conduits and fiber or replacement technology, which have been or may have been constructed, installed, or acquired by AT&T for its primary use, upon, across, or under a strip of land 16-½ (sixteen and one-half) feet wide (hereinafter called "**Grantee's Communications Corridor**"), the location of which is in Manchester, County of Hillsborough, State of New Hampshire and described as follows:

The boundaries of Grantee's Communications Corridor shall be parallel lines 8¼ (eight and one-quarter) feet on either side of the AT&T fiber optic cable now laid (the location of which cable shall be indicated by surface markers set by Grantee at intervals on Grantee's Communications Corridor); *provided*, however, that the width of Grantee's Communications Corridor shall be reduced on one side and increased by an equal linear footage on the other side wherever necessary in order that it shall in all places remain solely within the limits of the Boston and Maine Corporation right-of-way easement where the AT&T Telecommunication Cable System is now laid (the "**Settlement Corridor**"), and adjacent to or located entirely within Grantor's real estate in Manchester, County of Hillsborough, State of New Hampshire as described in Liber 1805, Pages 41-42; Liber 1817, Pages 433-35; and a Petition dated May 18, 1965 and a Return dated June 15, 1965, and as further described on attached Exhibit A.

It is understood and agreed that the permanent easement granted herein is subject to all pre-existing uses and pre-existing rights to use, Grantor's land, whether such uses are by Grantor or others and whether for surface uses, crossings, or encroachments by communication companies or utilities, and that Grantor retains whatever existing rights it currently possesses to permit, restrict, maintain, or remove such existing uses on the land of Grantor, including land comprising Grantee's Communications Corridor; provided, however, that no utility,

telecommunications, or similar cable, facilities, or equipment shall be installed hereafter within five feet on either side of AT&T's Telecommunication Cable System unless Grantee is notified in advance of any proposed encroachment within five feet of Grantee's fiber and/or conduits and Boston and Maine Corporation or the successor of Boston and Maine Corporation's existing rights bears the expense of a mutually acceptable contractor to ensure that during such construction Grantee's conduits are not harmed. It is further understood and agreed that Grantee shall not interfere with such reasonable uses of the land of Grantor, and that Grantor retains all of its existing rights to grant, convey, assign, and restrict any and all rights (including future rights and uses) on Grantor's land that is not part of Grantee's Communications Corridor.

Grantee's rights hereunder, furthermore, shall be non-exclusive as to Boston and Maine Corporation and Grantor, their successors or successors in title, and their pre-existing, current, or future licensees, provided that any change does not interfere with Grantee's Communication Cable System. This Grant of Communications System Easement/Release does not address the real property rights between Grantor and Boston and Maine Corporation, its successors or successors in title, and its pre-existing, current, or future licensees.

The permanent easement granted herein, including all rights incidental thereto, shall vest in and belong to Grantee exclusive of any rights or claims of Grantor that are not expressly reserved herein, and Grantor shall have no rights to grant other or additional telecommunication easements of any kind upon, across, or under Grantee's Communications Corridor without Grantee's consent (which shall not be unreasonably withheld) and upon payment of just compensation to Grantee, and, further to ensure the integrity of the Telecommunication Cable System, and additions, upgrades, or expansions thereto, shall have no rights to grant future utility easements upon, across, or under Grantee's Communications Corridor without Grantee's consent, which shall not be unreasonably withheld. The provisions of the foregoing sentence shall not apply to pre-existing uses and pre-existing rights of use expressly permitted in the third paragraph of this Easement/Release.

Grantee shall have the right to grant, convey, and assign to third parties in Grantee's sole and absolute discretion, and with no further compensation to Grantor, sublicenses, subeasements, or other rights, provided Grantee's rights hereunder are limited to grants, conveyances, or assignments to use excess capacity within systems and additions that were or may be constructed, installed, or acquired by AT&T for its primary use.

Grantor further grants and conveys to Grantee the following incidental rights and powers: (1) temporary rights-of-way and easements to be used during all periods of construction, reconstruction, repair, and removal upon so much of a strip of land 10 (ten) feet wide on each side of Grantee's Communications Corridor as is owned by Grantor; (2) ingress and egress upon and across the lands of Grantor to and from said temporary and permanent easements for the purpose of exercising the aforesaid rights, all upon reasonable notice by Grantee; (3) in keeping with environmentally safe and sound practices, the right to clear all trees, roots, brush, vines, overhanging limbs, and other obstructions from the surface and subsurface of the above-described permanent easement as are reasonably necessary for Grantee's use and operations, and during periods of construction, reconstruction, repair, and removal only, the same rights on the surface and subsurface of the above-described temporary easement, subject to just compensation to Grantor for damage caused by such acts of Grantee.

Grantor hereby covenants that Grantor will not make any change by grading or otherwise to the surface or subsurface of the land immediately adjacent to Grantee's Communications Corridor in such a manner that will interfere with Grantee's rights herein granted.

Grantor shall have the right to use and enjoy the land hereby encumbered by the above-described temporary and permanent easement so long as such use does not violate Grantee's rights of use and enjoyment of such land as herein granted.

**Grantor hereby releases** (1) Grantee and its predecessors, successors, and past and present subsidiaries, and their respective assigns, affiliates, officers, directors, agents, attorneys, insurers, and employees with respect to Settled Claims; and (2) only with respect to any and all claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, for liability or damages arising out of or relating to Grantee's installation, occupancy, maintenance, or use of telecommunication cable that has been installed on or in a Settlement Corridor, the Right-of-Way Provider; all of such Right-of-Way Provider's past or present officers, directors, agents, servants, attorneys, employees, predecessors-in-interest, successors, shareholders, subsidiaries, parents, affiliates, and assigns; and any Person to which AT&T heretofore sold, granted, leased, or otherwise transferred, and/or hereafter sells, grants, leases, or otherwise transfers, all or any part of the rights in or use of a Telecommunication Cable System on a Settlement Corridor which has been or may be constructed, installed, or acquired by AT&T for its primary use.

**"Settled Claims"** means (a) as to claims arising out of conduct occurring prior to July 13, 2005, any such claims relating to the installation, occupation, maintenance, or use of telecommunication cable that has been installed on or in the Settlement Corridor, or any other claims addressed in or arising out of the subject matter of the New Hampshire "Telecommunication Cable"/Railroad Corridor Class Settlement Agreement, dated April 6, 2005, or the Third Amended Class Action Complaint in *Bruce Larson, et al. v. AT&T Corp., et al.*, Case No. 1:01-cv-1657-DFH-TAB (S.D. Ind.) ("Class Settlement"), including without limitation claims for trespass, slander of title, unjust enrichment, criminal mischief, criminal trespass, and inverse condemnation, any and all such claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, that are or may be asserted now or in the future by any or all Class Members against AT&T and/or any Released Party; and (b) any future claims that would be based upon AT&T's lawful exercise of easement rights received under this Grant of Communications System Easement/Release and/or Final Order and Judgment.

Grantee releases Grantor from any and all damages and liability of any kind, whether past, present, or future, and whether foreseen or unforeseen, arising directly or indirectly on or from Grantor's use of Grantee's Communications Corridor, including any damages to Grantee's Telecommunication Cable System, except upon proof of Grantor's negligence, and if such negligence shall be proven then such damages and liability shall be limited to costs of repair and restoration and shall not include consequential damages. Grantor and Grantee shall mutually indemnify, defend, and hold harmless each other from any loss, damages, injuries, or liability, arising directly or indirectly in whole or in part from either party's negligent actions upon or negligent use of the land encumbered by Grantee's Communications Corridor.

Grantor represents, warrants, covenants, and agrees that – except as to any ownership interest of (1) Grantee and (2) any railroad company from which Grantee acquired rights to install, occupy, maintain, or use telecommunication cable on the property herein identified as Grantee's Communications Corridor, including but not limited to Boston and Maine Corporation, and any and all of such railroad company's predecessors-in-interest, successors, shareholders, subsidiaries, parents, affiliates, and assigns, or anyone claiming title through any of them – Grantor is the fee simple owner of the property and/or has the right, power, and authority to grant and convey to Grantee the above-described rights and easement. If Grantee so specifically requests, and the Grantor receives in excess of \$10,000 (ten thousand dollars) in class settlement



benefits, Grantor may also be required to execute a letter authorizing Grantee to obtain lienholder consent and approval.

Grantor and Grantee expressly acknowledge and agree that this Grant of Communications System Easement/Release sets forth the entire understanding and agreement of Grantor and Grantee with respect to Grantor's and Grantee's use, maintenance, and operation of Grantee's Communications Corridor. As between Grantor and Grantee, any prior easement, license, or other similar rights with respect to Grantee's use of Grantor's property from any source derived is hereby disclaimed and of no further force or effect, and Grantee relinquishes any and all prior claims it may have as to Grantor's property and to the Settlement Corridor; provided, however, that Grantee shall retain all rights it possesses vis-à-vis railroads and other third parties.

Other than rights Grantee receives in Grants of Communications System Easement/Release and rights Grantee receives or retains pursuant to the Order and Judgment in the Class Settlement, Grantee relinquishes any and all claims or rights it may have with respect to the Settlement Corridor; provided, however, that Grantee shall retain all rights it possesses vis-à-vis Persons who are not Class Members (specifically including railroads).

Grantee shall not acquire any easement rights in the Settlement Corridor except within the boundaries of Grantee's Communications Corridor or, outside of such boundaries, where AT&T might in the future enter into an agreement with a corridor ownership enterprise. The covenants, rights, terms, conditions, and provisions herein shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, assigns, lessees, and agents.

Grantor acquired his/her/its right, title, and interest in and to the land that is subject to this permanent easement pursuant to instrument dated October 30, 1964 and recorded November 4, 1964 in Liber 1805, Page 41-42, and instrument dated February 3, 1965 and recorded February 23, 1965 in Liber 1817, Pages 433-35, in the Hillsborough County (New Hampshire) Recorder's Office, and a Petition dated May 18, 1965 and a Return dated June 15, 1965 filed with Manchester, New Hampshire, City Clerk.

*[Remainder of the Page Left Intentionally Blank]*

Signed and witnessed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ at

WITNESS:

GRANTOR:

City of Manchester, a New Hampshire  
municipal corporation

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Print name legibly

Title: \_\_\_\_\_

Accepted and Agreed to  
this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

GRANTEE:  
AT&T Corp.  
3001 Cobb Parkway, N.W.  
Room 162-022  
Atlanta, GA 30339-3402

By: \_\_\_\_\_

Name: \_\_\_\_\_

State of New Hampshire  
County of Hillsborough

On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_ of the City of Manchester, ..  
known to me (or satisfactorily proven) to be the person described in the foregoing instrument,  
and acknowledged that he/she executed the same as the capacity therein stated and for the  
purposes herein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
Title of Officer

**After Recordation Return To:**

Andrew G. P. Abraham, Esq.  
Dickstein Shapiro LLP  
1825 Eye Street, NW  
Washington, DC 20006-5403

EXHIBIT A

300 Winston Street, Manchester, Hillsborough County:

Pursuant to Liber 1805, Page 41-42,

A certain tract or parcel of land situate in Manchester, County of Hillsborough and State of New Hampshire along the Easterly bank of the Merrimack River, bounded and described as follows:

Bounded on the North by the Limited Access Right of Way of the State of New Hampshire;

Bounded on the East by the Westerly side of the Boston and Maine Railroad, there measuring 2,700 feet, more or less;

Bounded on the South by land formerly of Jennie Riley, now or formerly land of Trustees of the Hellenic Orthodox Archdiocese of North and South America;

Bounded on the West by the Merrimack River; containing 21.50 acres, more or less. Also meaning and intending to convey herewith any right of way over adjoining premises for the benefit of the within premises as referred to in deed of Charles H. Morse et als to Roger Lara dated October 30, 1941, recorded in Volume Hillsborough County 1028, page 5 in said registry and as contained in deed of Frank T. Sysyn to Amoskeag Industries, Inc., dated November 6, 1962, recorded in said registry. Said premises are the same premises acquired by Frank Sysyn by deed of the City of Manchester, dated December 21, 1951, recorded in Volume 1310, page 70 in Hillsborough County Registry of Deeds excepting only that part of said premises described in deed of Frank T. Sysyn to the State of New Hampshire, recorded in Volume 1556, page 95 in said Registry. See also decree of Hillsborough County Superior Court on Petition to Quiet Title, Eq, 4610, Frank Sysyn v. Ruth P. Morse, et als, recorded at Volume 1733, page 103 in said Registry.

And, pursuant to Liber \_\_\_\_, Pages 433-35,

A certain tract or parcel of land situate in said Manchester bounded and described as follows:

Bounded on the North by land formerly of the heirs of James Thompson, and now or formerly of Frank Sysyn, there measuring Four Hundred Seventy-Eight (478) feet, more or less; bounded on the West by the Merrimack River, there measuring Seven Hundred Fifty (750) feet, more or less; bounded on the South by land of the Boston & Maine Railroad, formerly the Concord & Montreal Railroad, and bounded on the East by the Right of Way of said railroad; containg Four and Five tenths (4 and 5/10) acres, more or less.

And, pursuant to a Petition dated May 18, 1965 and a Return dated June 15, 1965 filed with Manchester, New Hampshire, City Clerk,

Approximately 1.52 acres of land in the vicinity of Goffs Falls, Manchester, New Hampshire, bounded on the north by land now or formerly of the Trustees of the Hellenic Archdiocese of North and South America; on the southeast by the right of way of the Boston and Maine Railroad; and on the west by the Merrimack River, containing approximately 66,500 square feet, more particularly described on maps of the Boston and Maine Railroad Vol. Section 21, Map 14.

**DISCLAIMER**

The information appearing on this map is for the convenience of the user and is not an official public record of the City of Worcester, MA (the "City"). This map is not survey-quality and, therefore, the City does not warrant its accuracy. Any use appearing on this map should only be for general approximations, and as such have no official or legal value. The City makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of this information for any particular use. The City assumes no liability whatsoever associated with the use or misuse of this information. The official public records from which this information was compiled are kept in the offices of the City of Worcester, County and State government agencies or various City, County and State government agencies copying during normal business hours. By using this map, you agree to these terms and conditions.

**NEW HAMPSHIRE  
"TELECOMMUNICATION CABLE"/  
RAILROAD CORRIDOR CLASS SETTLEMENT  
GRANT OF COMMUNICATIONS SYSTEM EASEMENT/RELEASE**

In consideration of the sum of \$10 (ten dollars) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, City of Manchester, a New Hampshire municipal corporation (hereinafter collectively with his/her/its successors-in-interest called "**Grantor**"), **hereby grants, conveys, and assigns** to AT&T Corp., a New York corporation, its predecessors, successors, and past and present subsidiaries, assigns, affiliates, officers, directors, agents, attorneys, insurers, and employees (hereinafter called "**Grantee**"), a permanent easement to operate, maintain, reconstruct, replace, and remove its present telecommunication cable system, which system includes without limitation underground and/or surface cables, conduits, wires, pipes, ducts, waveguides, surface testing terminals, manholes, markers, regeneration huts, and other appurtenances (hereinafter collectively called "**Telecommunication Cable System**"), *all where they are presently in place*, plus future additions, upgrades, or expansions to the Telecommunication Cable System, as well as to install new conduits and fiber or replacement technology, which have been or may have been constructed, installed, or acquired by AT&T for its primary use, upon, across, or under a strip of land 16-½ (sixteen and one-half) feet wide (hereinafter called "**Grantee's Communications Corridor**"), the location of which is in Manchester, County of Hillsborough, State of New Hampshire and described as follows:

The boundaries of Grantee's Communications Corridor shall be parallel lines 8¼ (eight and one-quarter) feet on either side of the AT&T fiber optic cable now laid (the location of which cable shall be indicated by surface markers set by Grantee at intervals on Grantee's Communications Corridor); *provided*, however, that the width of Grantee's Communications Corridor shall be reduced on one side and increased by an equal linear footage on the other side wherever necessary in order that it shall in all places remain solely within the limits of the Boston and Maine Corporation right-of-way easement where the AT&T Telecommunication Cable System is now laid (the "**Settlement Corridor**"), and adjacent to or located entirely within Grantor's real estate in Manchester, County of Hillsborough, State of New Hampshire as described in Instrument Number 331445, Book 5445, Page 0447, and as further described on attached Exhibit A.

It is understood and agreed that the permanent easement granted herein is subject to all pre-existing uses and pre-existing rights to use, Grantor's land, whether such uses are by Grantor or others and whether for surface uses, crossings, or encroachments by communication companies or utilities, and that Grantor retains whatever existing rights it currently possesses to permit, restrict, maintain, or remove such existing uses on the land of Grantor, including land comprising Grantee's Communications Corridor; provided, however, that no utility,

telecommunications, or similar cable, facilities, or equipment shall be installed hereafter within five feet on either side of AT&T's Telecommunication Cable System unless Grantee is notified in advance of any proposed encroachment within five feet of Grantee's fiber and/or conduits and Boston and Maine Corporation or the successor of Boston and Maine Corporation's existing rights bears the expense of a mutually acceptable contractor to ensure that during such construction Grantee's conduits are not harmed. It is further understood and agreed that Grantee shall not interfere with such reasonable uses of the land of Grantor, and that Grantor retains all of its existing rights to grant, convey, assign, and restrict any and all rights (including future rights and uses) on Grantor's land that is not part of Grantee's Communications Corridor.

Grantee's rights hereunder, furthermore, shall be non-exclusive as to Boston and Maine Corporation and Grantor, their successors or successors in title, and their pre-existing, current, or future licensees, provided that any change does not interfere with Grantee's Communication Cable System. This Grant of Communications System Easement/Release does not address the real property rights between Grantor and Boston and Maine Corporation, its successors or successors in title, and its pre-existing, current, or future licensees.

The permanent easement granted herein, including all rights incidental thereto, shall vest in and belong to Grantee exclusive of any rights or claims of Grantor that are not expressly reserved herein, and Grantor shall have no rights to grant other or additional telecommunication easements of any kind upon, across, or under Grantee's Communications Corridor without Grantee's consent (which shall not be unreasonably withheld) and upon payment of just compensation to Grantee, and, further to ensure the integrity of the Telecommunication Cable System, and additions, upgrades, or expansions thereto, shall have no rights to grant future utility easements upon, across, or under Grantee's Communications Corridor without Grantee's consent, which shall not be unreasonably withheld. The provisions of the foregoing sentence shall not apply to pre-existing uses and pre-existing rights of use expressly permitted in the third paragraph of this Easement/Release.

Grantee shall have the right to grant, convey, and assign to third parties in Grantee's sole and absolute discretion, and with no further compensation to Grantor, sublicenses, subeasements, or other rights, provided Grantee's rights hereunder are limited to grants, conveyances, or assignments to use excess capacity within systems and additions that were or may be constructed, installed, or acquired by AT&T for its primary use.

Grantor further grants and conveys to Grantee the following incidental rights and powers: (1) temporary rights-of-way and easements to be used during all periods of construction, reconstruction, repair, and removal upon so much of a strip of land 10 (ten) feet wide on each side of Grantee's Communications Corridor as is owned by Grantor; (2) ingress and egress upon and across the lands of Grantor to and from said temporary and permanent easements for the purpose of exercising the aforesaid rights, all upon reasonable notice by Grantee; (3) in keeping with environmentally safe and sound practices, the right to clear all trees, roots, brush, vines, overhanging limbs, and other obstructions from the surface and subsurface of the above-described permanent easement as are reasonably necessary for Grantee's use and operations, and during periods of construction, reconstruction, repair, and removal only, the same rights on the surface and subsurface of the above-described temporary easement, subject to just compensation to Grantor for damage caused by such acts of Grantee.

Grantor hereby covenants that Grantor will not make any change by grading or otherwise to the surface or subsurface of the land immediately adjacent to Grantee's Communications Corridor in such a manner that will interfere with Grantee's rights herein granted.



Grantor shall have the right to use and enjoy the land hereby encumbered by the above-described temporary and permanent easement so long as such use does not violate Grantee's rights of use and enjoyment of such land as herein granted.

**Grantor hereby releases** (1) Grantee and its predecessors, successors, and past and present subsidiaries, and their respective assigns, affiliates, officers, directors, agents, attorneys, insurers, and employees with respect to Settled Claims; and (2) only with respect to any and all claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, for liability or damages arising out of or relating to Grantee's installation, occupancy, maintenance, or use of telecommunication cable that has been installed on or in a Settlement Corridor, the Right-of-Way Provider; all of such Right-of-Way Provider's past or present officers, directors, agents, servants, attorneys, employees, predecessors-in-interest, successors, shareholders, subsidiaries, parents, affiliates, and assigns; and any Person to which AT&T heretofore sold, granted, leased, or otherwise transferred, and/or hereafter sells, grants, leases, or otherwise transfers, all or any part of the rights in or use of a Telecommunication Cable System on a Settlement Corridor which has been or may be constructed, installed, or acquired by AT&T for its primary use.

**"Settled Claims"** means (a) as to claims arising out of conduct occurring prior to July 13, 2005, any such claims relating to the installation, occupation, maintenance, or use of telecommunication cable that has been installed on or in the Settlement Corridor, or any other claims addressed in or arising out of the subject matter of the New Hampshire "Telecommunication Cable"/Railroad Corridor Class Settlement Agreement, dated April 6, 2005, or the Third Amended Class Action Complaint in *Bruce Larson, et al. v. AT&T Corp., et al.*, Case No. 1:01-cv-1657-DFH-TAB (S.D. Ind.) ("Class Settlement"), including without limitation claims for trespass, slander of title, unjust enrichment, criminal mischief, criminal trespass, and inverse condemnation, any and all such claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, that are or may be asserted now or in the future by any or all Class Members against AT&T and/or any Released Party; and (b) any future claims that would be based upon AT&T's lawful exercise of easement rights received under this Grant of Communications System Easement/Release and/or Final Order and Judgment.

Grantee releases Grantor from any and all damages and liability of any kind, whether past, present, or future, and whether foreseen or unforeseen, arising directly or indirectly on or from Grantor's use of Grantee's Communications Corridor, including any damages to Grantee's Telecommunication Cable System, except upon proof of Grantor's negligence, and if such negligence shall be proven then such damages and liability shall be limited to costs of repair and restoration and shall not include consequential damages. Grantor and Grantee shall mutually indemnify, defend, and hold harmless each other from any loss, damages, injuries, or liability, arising directly or indirectly in whole or in part from either party's negligent actions upon or negligent use of the land encumbered by Grantee's Communications Corridor.

Grantor represents, warrants, covenants, and agrees that – except as to any ownership interest of (1) Grantee and (2) any railroad company from which Grantee acquired rights to install, occupy, maintain, or use telecommunication cable on the property herein identified as Grantee's Communications Corridor, including but not limited to Boston and Maine Corporation, and any and all of such railroad company's predecessors-in-interest, successors, shareholders, subsidiaries, parents, affiliates, and assigns, or anyone claiming title through any of them – Grantor is the fee simple owner of the property and/or has the right, power, and authority to grant and convey to Grantee the above-described rights and easement. If Grantee so specifically requests, and the Grantor receives in excess of \$10,000 (ten thousand dollars) in class settlement

benefits, Grantor may also be required to execute a letter authorizing Grantee to obtain lienholder consent and approval.

Grantor and Grantee expressly acknowledge and agree that this Grant of Communications System Easement/Release sets forth the entire understanding and agreement of Grantor and Grantee with respect to Grantor's and Grantee's use, maintenance, and operation of Grantee's Communications Corridor. As between Grantor and Grantee, any prior easement, license, or other similar rights with respect to Grantee's use of Grantor's property from any source derived is hereby disclaimed and of no further force or effect, and Grantee relinquishes any and all prior claims it may have as to Grantor's property and to the Settlement Corridor; provided, however, that Grantee shall retain all rights it possesses vis-à-vis railroads and other third parties.

Other than rights Grantee receives in Grants of Communications System Easement/Release and rights Grantee receives or retains pursuant to the Order and Judgment in the Class Settlement, Grantee relinquishes any and all claims or rights it may have with respect to the Settlement Corridor; provided, however, that Grantee shall retain all rights it possesses vis-à-vis Persons who are not Class Members (specifically including railroads).

Grantee shall not acquire any easement rights in the Settlement Corridor except within the boundaries of Grantee's Communications Corridor or, outside of such boundaries, where AT&T might in the future enter into an agreement with a corridor ownership enterprise. The covenants, rights, terms, conditions, and provisions herein shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, assigns, lessees, and agents.

Grantor acquired his/her/its right, title, and interest in and to the land that is subject to this permanent easement pursuant to instrument dated June 21, 1993 and recorded June 22, 1993 as Instrument Number 331445, Book 5445, Page 0447, in the Hillsborough County (New Hampshire) Recorder's Office.

*[Remainder of the Page Left Intentionally Blank]*

Signed and witnessed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ at \_\_\_\_\_.

WITNESS:

GRANTOR:

City of Manchester, a New Hampshire  
municipal corporation

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Print name legibly

Title: \_\_\_\_\_

GRANTEE:

AT&T Corp.  
3001 Cobb Parkway, N.W.  
Room 162-022  
Atlanta, GA 30339-3402

By: \_\_\_\_\_

Name: \_\_\_\_\_

State of New Hampshire  
County of Hillsborough

On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_ of the City of Manchester,  
known to me (or satisfactorily proven) to be the person described in the foregoing instrument,  
and acknowledged that he/she executed the same as the capacity therein stated and for the  
purposes herein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
Title of Officer

**After Recordation Return To:**

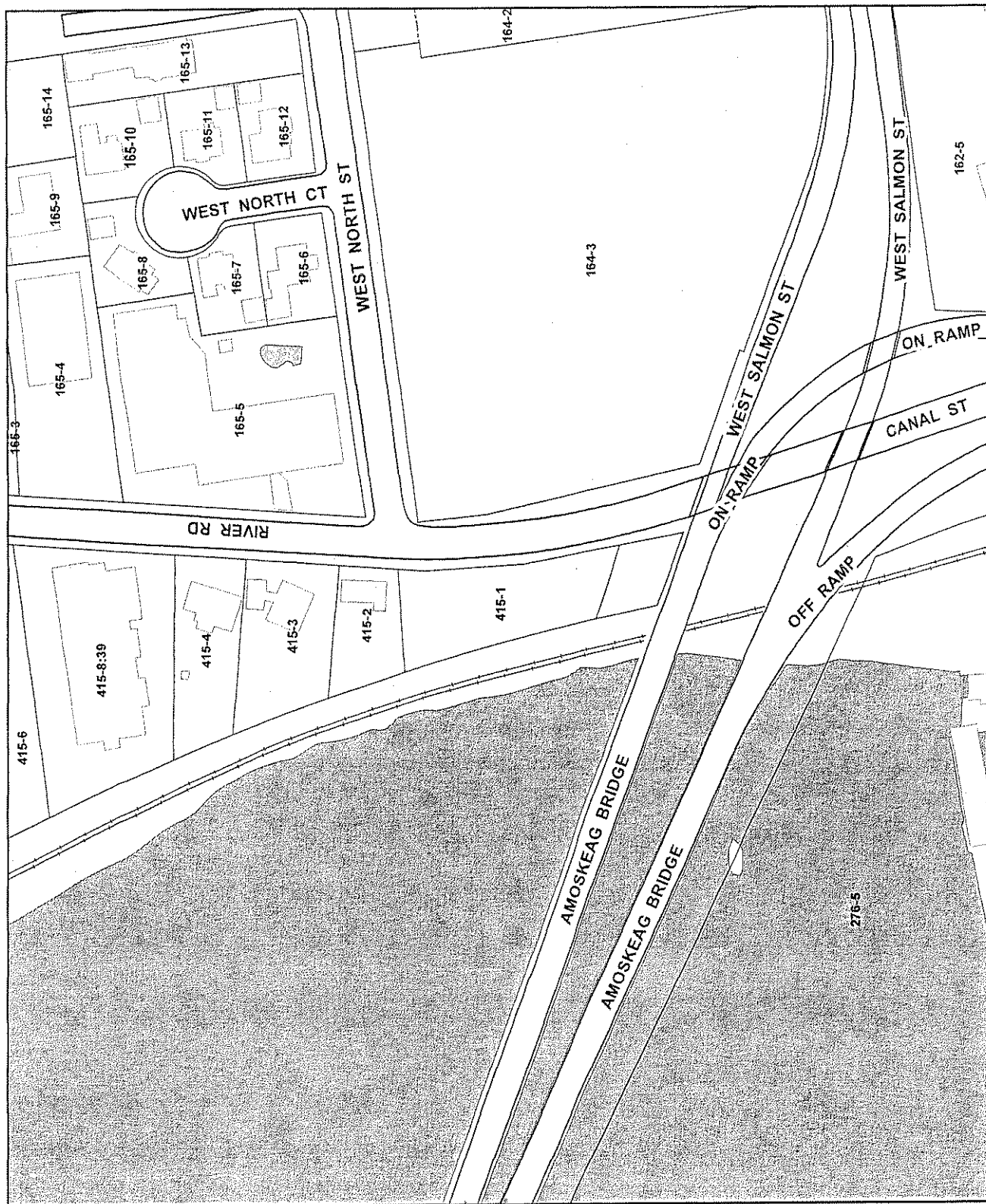
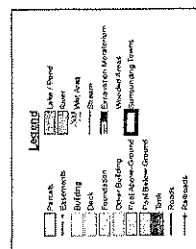
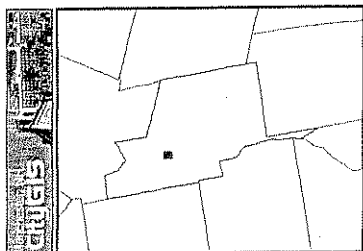
Andrew G. P. Abraham, Esq.  
Dickstein Shapiro LLP  
1825 Eye Street, NW  
Washington, DC 20006-5403

EXHIBIT A

River Road, Manchester, Hillsborough County:

a certain tract or parcel of land  
situated in Manchester aforesaid, and described by the Assessors  
as follows:

L Pt of Lot 3925 River  
Map# 415 Lot# 1



City of Manchester, New Hampshire - CityGIS Map Print